

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

22 Cr. 280 (MKB)

INSAF ALI

Defendant.

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Defendant's Sentencing Memorandum

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Hope is the thing with feathers –  
That perches in the soul –  
And sings the tune without the words –  
And never stops – at all ...<sup>1</sup>

In Guyana, the small black seed finch with the chestnut-colored belly is known as the “towa towa.” These birds are part of a centuries old Guyanese tradition that has been passed down through generations. This tradition has transcended social and racial divides in this former British colony. For Insaf Ali, who grew up poor, with a limited education, suffering from the discrimination he faced as a practicing Muslim, and also quietly suffering from his father’s physical abuse.<sup>2</sup> The “thing with feathers, the “towa towa,” provided him with not just hope, but comfort as well-- a sort of salve for the soul.

Insaf Ali recognizes that he has once again been convicted of a federal crime related to illegally smuggling these finches. Although he recognizes that this Court has previously sentenced him to probation for a similar offense, he requests leniency once again. While the Court may have heard promises of rehabilitation and redemption many times before, Insaf Ali only hopes that the Court understands that his actions were not just about money. The “towa towa” are a part of him and a part of his culture. However, as the Court will learn, Insaf Ali’s cognitive functioning has gone through a sharp decline. Therefore, his ability to reason and make sound decisions about himself, his life, and his health, have been greatly incumbered. Insaf Ali is incredibly remorseful for his actions.<sup>3</sup> His personal history and characteristics make it extremely unlikely that he will ever again commit another crime.<sup>4</sup>

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<sup>1</sup> Dickenson, Emily, ““Hope” is the thing with feathers,” from *The Complete Poems of Emily Dickinson*, edited by Thomas H. Johnson, ed., Cambridge, Mass.: The Belknap Press of Harvard University press. (1951).

<sup>2</sup> See Exhibit C, pg. 2.

<sup>3</sup> A letter written by Insaf Ali is submitted as Exhibit A.

<sup>4</sup> A sentencing video is submitted as part of this memorandum as Exhibit B. A USB containing said video was mailed by counsel to the Court and to the AUSA on January 26, 2022. An email with a link to the sentencing video was sent

## I. INTRODUCTION

This memorandum is submitted as Insaf Ali's sentencing recommendation. We urge this Court to sentence him to a below guidelines sentence pursuant to 18 U.S.C. §3553(a). A below guidelines sentence would ensure that Insaf Ali was punished for his crime but would also ensure that he is able to receive the medical treatment and mental health treatment he desperately needs. For the reasons fully set forth herein, Insaf Ali respectfully requests that the Court impose a sentence of four years' probation, along with mental health treatment, based upon all the factors set forth in 18 U.S.C. §3553(a), Gall v. United States, 128 S.Ct. 586 (2007), Kimbrough v. United States, 128 S.Ct. 558 (2007); United States v. Booker, 125 S.Ct. 738 (2005) and United States v. Cavera, 550 F.3d 180 (2nd Cir. 2008).

Title 18 U.S.C. §3553(a) requires this Court to impose a sentence which is sufficient but not greater than necessary to reach the sentencing goals of Congress. Those goals include providing just punishment, protecting the public from the future crimes of the offender and providing necessary vocational and rehabilitative needs of the offender. 18 U.S.C. §3553(a)(2). This submission focuses upon the background, history and circumstances of Insaf Ali, and counsel strongly believes that when the Court reviews the circumstances of his life, which includes the deterioration of his mental health, cognitive functioning, and physical health, a sentence of probation and mental health treatment is warranted.

## II. GUYANA

### Colonization and the introduction of finch singing competitions

Finch singing competitions, or Vinkensport (Dutch for “finch sport”) in Guyana, date back to the sixteenth century and were held by Dutch and Flemish merchants.<sup>5</sup> Vinkensport has a long history in Guyana, since the Dutch first colonized the country in the late sixteenth century. Around the same time that this tradition began, the Dutch, after having colonized the indigenous population of Guyana, began importing slaves from West Africa to cultivate sugarcane.<sup>6</sup> The British eventually took control of Guyana in 1814, and subsequently abolished slavery in Guyana in 1834. Faced with labor shortages on Guyanese plantations, the British contracted indentured workers from India.<sup>7</sup> The tradition and love of Vinkensport was passed on to the descendants of African slaves, native peoples and Indians that were affected by colonization, slavery, and indentured servitude, until ultimately reaching Insaf Ali. Finch sport is an ingrained part of Guyanese culture and has been for centuries.

Aside from Africans and Indians, Guyana is made up of many other different ethnicities, such as the Portuguese, Chinese, European, and aboriginal peoples. As a result of these various groups, Guyana since its independence in 1966, has been plagued by ethno-political conflict. In addition, Guyana has also been plagued by religious conflict.<sup>8</sup> However, Guyanese bird singing

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<sup>5</sup> Clifton, Merritt, “Finches found in hair curlers: trafficked to sing, or to fight?” <https://www.animals24-7.org/2019/06/29/finches-found-in-hair-curlers-trafficked-to-sing-or-to-fight/> (June 29, 2019); Bilefsky, Dan, “One ounce Belgian idols vie for most tweets per hour,” <https://www.nytimes.com/2007/05/21/world/europe/21finch.html> (May 21, 2007).

<sup>4</sup> Hoonhout, Bram, “The Forgotten History of Dutch Slavery in Guyana” <https://www.universiteitleiden.nl/en/news/2020/02/the-forgotten-history-of-dutch-slavery-in-guyana> (February 28, 2020).

<sup>7</sup> Sen, Sunanda, “Indentured labor from India in the Age of the Empire,” Published By: Social Scientist, (2016)

<sup>8</sup> Insaf Ali and his family practice Islam, which is the third largest religion in the country after Christianity and Hindus. See, Guyana 2016 International Religious Freedom Report <https://web.archive.org/web/20170815171203/https://www.state.gov/documents/organization/269230.pdf>

competitions are one of the only customs that transcends social and racial divides in the former British colony. According to naturalist Gajendra Nauth Narine, a local Georgetown, Guyana celebrity who goes by “Andy, “All backgrounds and religions come together, all because of one bird.”<sup>9</sup> While the illegal importation of these finches can be lucrative, for Insaf Ali, it was about more than that. Caring for and training the “towa towa” to sing has been a balm to Insaf Ali, and a way for him to deal with the many difficulties life has thrown his way.

#### Insaf Ali falls in love with the towa towa

Insaf Ali fondly recalls receiving his first finch from his grandfather when he was just nine years old. He quickly fell in love with the bird, and every day before going to school, he would “walk” his bird by placing the bird in his hands and walking around the neighborhood so that the bird did not go stir crazy in its cage. By the time he was ten years old, Insaf Ali was fully engrossed in bird training. Eventually, Insaf Ali learned from a school friend how to go into the forest and catch the birds himself. Insaf Ali reports that once he had a wild finch, he would begin the process of training them to sing, or whistle, a method known as “mining the birds.” Insaf Ali reports that it took him approximately three months to train his birds how to sing.

The singing competitions took place every Sunday, and every Sunday, young Insaf Ali would attend the competitions. During the competitions, there are two cages each containing a male finch. Each cage is hung on a pole approximately one inch apart. The birds start to sing and are judged on the number of songs they sing. The first bird to reach 50 songs wins. Insaf Ali reports that he never entered any of his birds in these Sunday competitions, he merely enjoyed attending. For Insaf Ali, watching the competitions helped him to feel like he was part of a

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<sup>9</sup> Gupta, Girish, “Amazon songbirds compete in Guyana ‘races,’” <https://www.reuters.com/article/us-guyana-birds/amazon-songbirds-compete-in-guyana-races-idUSKCN0JF3D520141202> (December 1, 2014).

community where everyone's interests aligned with his, and where his ethnicity, religion and socioeconomic status did not matter. Caring for his birds and attending the weekly competitions also helped young Insaf Ali deal with his challenging homelife.

#### Insaf Ali's difficult home life

Insaf Ali is the third of five children born to Mohameed Ali and Sharan Ali. He grew up in the small village of Windsor Forest, Guyana, located along the Atlantic coast, approximately six miles north of Georgetown. The primary economy of the village is rice cultivation. Mohameed Ali worked as a tailor and rice farmer, but on the weekend, he also worked as a cab driver to support his large family. Sharan Ali was a home maker. Even with his father's three jobs, Insaf Ali's family struggled financially.<sup>10</sup>

Although he does not like to discuss it, Insaf Ali was physically abused by his father. His mother was also physically abused by his father.<sup>11</sup> The family was not able to afford shoes or textbooks with which to send Insaf Ali to school. However, every Sunday, Insaf Ali was able to forget about his struggle and his problems as he listened to the towa towa sing. In addition, training and caring for his own birds at home provided him with a sense of comfort and peace in a household that was full of violence.

Due to the family's financial difficulties, Insaf Ali's father forced him to drop out of school at the age of fourteen so that he could learn a trade to help support the family. After leaving school, Insaf Ali spent two and a half years as an apprentice welder. He then began working as an unlicensed welder for a few years. However, since he was unlicensed, he earned very little money; approximately five Guyanese dollars per week. In order to obtain a license in

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<sup>10</sup> Insaf Ali's personal history is outlined in the PSR at ¶¶ 45-53.

<sup>11</sup> See Exhibit C, pg. 2.

Guyana, he would have to attend the trade school, which at that time cost \$3000 Guyanese dollars. Insaf Ali's father did not have the money to send his son to school. As a result, Insaf Ali worked as an unlicensed welder until he was able to get a construction job at the El Dorado Rum Distillery earning \$2 Guyanese dollars per hour. Even though he was still living at home, this was barely enough to support himself. However, Insaf Ali could always turn to his birds for a sense of calm, companionship and stress relief. Insaf Ali cared for birds and attended these weekly competitions until he emigrated to the United States in 1984.

### **III. NEW YORK**

#### The American Dream

Eventually, the Ali family decided to leave their home and emigrate to the United States to pursue the "American Dream." Insaf Ali reports that his parents left first in 1983, along with his sisters. One year later, Insaf Ali and his brothers joined the family, leaving his home country and his beloved finches behind. Although the Ali family was living in tight quarters--a two-bedroom apartment in the Bronx, things started to improve. The "American Dream" started to become a reality. Mohammad Ali was able to open his own dry cleaning and tailoring business, which he ran until he retired in 2015. Insaf Ali began working for a company that made ovens and was able to eventually afford returning to something he loved, welding. Insaf Ali was able to obtain his welder's license and spent the next few decades working as a welder.<sup>12</sup>

#### Finches in New York

Once he was able to establish himself in New York, Insaf Ali's family decided that it was time for him to settle down and start a family. In 1988, he married Bibi Ali, and the couple had

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<sup>12</sup> Insaf Ali's Employment History is outlined in the PSR at ¶¶ 59-63.

three children together, now all adults.<sup>13</sup> Bibi Ali reports that Insaf Ali always had at least two to three birds in their home throughout their marriage. She recalls once asking his mother about the birds and his mother reported that Insaf Ali has “loved birds since he was a child.” Bibi Ali confirms that the birds are “cultural,” and that he liked to take them outside, sit with them and whistle with them. Mrs. Ali reported a specific incident that occurred during their marriage and has stuck with her. Insaf Ali took one of his birds outside, when another bird swooped down and attacked the bird, injuring its head. Although Insaf Ali’s bird survived, Mrs. Ali reports that he was very upset by it and started crying.

Insaf Ali’s oldest daughter and son both report that when they were growing up, their father always had birds in the home. It became clear to them that he cared a great deal for them. His daughter reports that he was always “so gentle” with his birds. At home, he would place the cages in front of the window and whistle with them. Insaf Ali’s son recalls a time after his parents separated when his father taught him how to care for his birds while he was on vacation. Therefore, Insaf Ali was delighted when, in the early 2000’s, he discovered Guyanese bird singing competition in New York.

While illegally importing these finches can be lucrative, the birds were about more than money for Insaf Ali. Money was not his main reason and driving force for participating in this crime. His need to have these specific birds to train, sing with, and to keep him company satisfied an emotional longing and need. This emotional connection to the towa towa began when Insaf Ali was a small boy and stayed with him as he navigated life in America. Kimon de Greef, a Special Agent with the U.S. Fish and Wildlife Service once said in an interview about the illegal importation of finches, “This is the wildlife trade driven by a diaspora who are taking a tradition

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<sup>13</sup> Insaf Ali and Bibi Ali are currently going through a divorce.



from home to a new landscape. Guys that I spoke to, they're working-class men mostly. They work in construction or putting air conditioners in hospitals during the pandemic. They just say this reminds them of home. This is what their parents did in Guyana when they were growing up. These guys have created a kind of diaspora ritual around doing this in New York."<sup>14</sup>

#### **IV. DETERIORATING MENTAL AND PHYSICAL HEALTH**

##### Insaf Ali receives the shock of his life

Bibi Ali reports that she and Insaf Ali have been separated since at least 2016, but they remained friends and were on good terms until 2019. When pressed as to what caused the breakdown of their friendship in 2019, Mrs. Ali responded, "It's a family thing. Let's just leave it at that." However, according to Insaf Ali, in 2019, his oldest daughter and son submitted their DNA to ancenstry.com. The results sent Insaf Ali's life and mental health into a tailspin. Through the results of this DNA test, his daughter learned that her brother was not her full brother, but her half-brother, meaning that he had a different father. Shaken and upset, she reported her findings to her parents. In this way, Insaf Ali learned something completely unexpected. His wife of over thirty years had been having a decades long affair with his brother-in-law, his own sister's husband, and a former good friend of his.

Insaf Ali has been devastated by these events, and reports that since that day, his life has never been the same. He also believes that although she refuses to take a test, his youngest daughter may also not be biologically his. After learning that two of his children, who he has

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<sup>14</sup> Noel King NPR interview, "High Demand for Songbirds Encourages Some To Attempt Smuggling" <https://www.npr.org/2021/05/04/993384897/high-demand-for-song-birds-encourages-some-to-attempt-smuggling> (May 4, 2021).

raised and loved, were not his, and that his wife had been having a long-term relationship with his friend and brother-in-law, Insaf Ali did not know where to turn. He began obsessing over this deception, and it has plagued Insaf Ali ever since. It has devastated him and left him drowning in depression and suffering from insomnia. For comfort, and for distraction, he stupidly turned back to illegally bringing seed finches into the United States.

Mental health and cognitive function

At the defense request, psychologist Liliana Rusansky Drob conducted a forensic evaluation of Insaf Ali. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In 2018, Insaf Ali took himself to the emergency room because he had a painful bruise on his left foot.<sup>16</sup> He learned that this was a result of his poorly controlled type II diabetes, and one toe was amputated. Insaf Ali was placed on a strict diet, which unfortunately he did not always

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<sup>15</sup> Dr. Drob's report is submitted under seal as Exhibit C.

<sup>16</sup> Insaf Ali's Physical, Mental and Emotional Health are outlined in the PSR at ¶¶54-56.

follow, although he was able to lose a significant amount of weight.<sup>17</sup> In early 2022, Insaf Ali noticed that the toes of his left foot were starting to swell. Scared, he went to the hospital, where he was informed that his toes had to be amputated, or he was at risk of losing his leg. In March of 2022, the remaining four toes on Insaf Ali's left foot were amputated.<sup>18</sup> Currently, Insaf Ali uses a cane to walk, however even after attending physical therapy, he has difficulty walking. Insaf Ali also suffers from arthritis, high blood pressure, and cardiovascular disease.<sup>19</sup>

## **V. INSTANT OFFENSE**

Insaf Ali admits his guilt, accepts responsibility, and expresses sincere remorse for his actions in this matter. He is well aware that this is his second conviction related to the smuggling of birds, and that this Court sentenced him to probation in 2018. He apologizes to this Court for committing the instant offense. While the request for a non-custodial sentence may seem extraordinary given the charged conduct, the facts and circumstances of this crime, coupled with Insaf Ali's personal history and characteristics warrant compassion.

Insaf Ali admitted his guilt and accepted responsibility relatively quickly in this matter, saving the government the time and expense of prosecuting this crime.<sup>20</sup> He made a bad decision to illegally import birds, due in large part to his inability to manage his mental and emotional health, and perhaps his being unaware that his cognitive functioning had begun to decline. His deteriorating mental health, cognitive function and physical health make it extremely unlikely that

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<sup>17</sup> Exhibit C, pg. 6.

<sup>18</sup> Portions of Insaf Ali's medical records are submitted as Exhibit D.

<sup>19</sup> Insaf Ali's father passed away in 2018 from complications of diabetes and Alzheimer's disease. See Ex. B, pg. 2 and pg.4.

<sup>20</sup> [REDACTED]

he will continue to illegally import birds, or to commit any other crimes.

## VI. COVID-19 CONSIDERATIONS

As the Court is aware, our nation is still battling the Covid-19 pandemic. By April 3, 2021, 394,066 Covid-19 cases and 2,555 deaths due to Covid-19 had been reported among the US prison population.<sup>21</sup> “By May 4 [2021], at least 396,693 people in prison had tested positive for the illness...”<sup>22</sup> A large obstacle to controlling this virus in prisons is the BOP’s historic inability to foster inmate social distancing.<sup>23</sup> “Prison facilities are often overcrowded and poorly ventilated. Dormitory-style housing, cafeterias and open-bar cell doors make it nearly impossible to quarantine. Prison populations are sicker, on average, than the general population, and health care behind bars is notoriously substandard. Nationwide, the mortality rate for Covid-19 among prisoners is 45 percent higher than the overall rate.”<sup>24</sup>

A months-long “remote inspection” of FCC Oakdale, a low-security federal corrections complex in Louisiana, concluded that a series of management failures worsened a March [2020] outbreak at the prison, where 1,823 inmates contracted the virus and eight died. The BOP is still not capable of containing the spread of the virus, since the most updated information provided by the BOP at MDC Brooklyn shows that 691 inmates have tested positive for Covid-19.<sup>25</sup>

While every person is at risk of contracting the virus, people with diabetes are at an

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21 See, Neal Marquez, MPH; Julie A. Ward, MN, RN; Kalind Parish, “COVID-19 Incidence and Mortality in Federal and State Prisons Compared With the US Population, April 5, 2020, to April 3, 2021,” <https://jamanetwork.com/journals/jama/fullarticle/2784944>

22 Katie Park and Tom Meagher, “A State-by-State Look at Coronavirus in Prisons,” The Marshall Project, (May 6, 2021) <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>

23 See, Beth Schwartzapfel, Katie Park and Andrew Demillo, *1 in 5 Prisoners in the U.S. Has Had Covid-19*, The Marshall Project, (December 18, 2020) <https://www.themarshallproject.org/2020/12/18/1-in-5-prisoners-in-the-u-s-has-had-covid-19>

24 Id.

25 [https://www.bop.gov/coronavirus/covid19\\_statistics.html](https://www.bop.gov/coronavirus/covid19_statistics.html)

increased risk of severe complications and death should they contract Covid-19.<sup>26</sup> In addition, having a heart condition can make you more likely to get very sick from Covid-19. Unfortunately, Insaf Ali's type II diabetes, high blood pressure, and heart condition puts him at great risk for serious illness or death.

## VII. CONCLUSION

“A bird doesn't sing because it has an answer. It sings because it has a song.”<sup>27</sup>

Insaf Ali is over sixty years old and is suffering from numerous health problems. While this Court has previously given Insaf Ali a chance, he is not a violent person, he has not caused pain or injury to a specific person, and there is no evidence that the birds he smuggled carried disease. His health and mental functions have significantly declined. As a result, he is not a danger to the community. In addition, after counsel discussed Dr. Drob's findings with Insaf Ali, he has decided to seek mental health treatment on his own.<sup>28</sup> Should the Court sentence him to probation, the Probation Office can ensure that he continues with his mental health treatment. Insaf Ali's goal at this point in his life is to visit Mecca, Saudi Arabia for Hajj, a pillar of Islam, required of all Muslims once in a lifetime.

The least restrictive sentence necessary to satisfy the four purposes of sentencing; punishment, deterrence, protection of the public, and rehabilitation, along with due consideration of the factors identified in 18 USC §3553(a), is a sentence of four years' probation. Such a

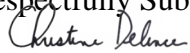
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<sup>26</sup> “People With Certain Medical Conditions,” Centers for Disease Control and Prevention (April 29, 2021) <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

<sup>27</sup> Widely attributed to Maya Angelou.

<sup>28</sup> Insaf Ali reports that he has tried to contact several therapist offices in the Bronx and Manhattan that accept his insurance. Each office informed him that they have no immediate availability. However, Lifestance Health Therapist, an office that provides mental health treatment and is located in the Bronx, has registered Insaf Ali and will contact him when they have availability.

sentence is sufficient but not greater than necessary to accomplish the goals of sentencing. See United States v. Booker, 125 S.Ct. 738 (2005).<sup>29</sup>

Respectfully Submitted,  
  
Christine Delince, Esq.

cc: AUSA Zuckerwise

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<sup>29</sup> Letters of support are submitted as Exhibit E.